

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA IRWIN and DEPARTMENT OF THE ARMY,
Fort Wainwright, AK

*Docket No. 98-2436; Submitted on the Record;
Issued June 16, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are whether the Office of Workers' Compensation Programs met its burden of proof to rescind its acceptance of employment-related carpal tunnel syndrome.

On August 29, 1995 appellant, then a 35-year-old sales store checker, filed a claim for bilateral carpal tunnel syndrome that she attributed to lifting and scanning items. In a report dated February 6, 1996, Dr. Bradley Vossberg, a general practitioner, noted that nerve conduction velocity (NCV) testing on October 19, 1995 was normal, and that appellant's symptoms had persisted in spite of conservative treatment with medications, splints, physical therapy and ice. Dr. Vossberg then stated: "Her symptoms and exam[ination] are very consistent with a diagnosis of CTS [carpal tunnel syndrome]. Up to 80 [percent] of people with CTS will have a normal NCV test. It is my opinion that [appellant's] medical condition is in fact due to her position as a product scanner."

On March 15, 1996 the Office accepted that appellant had sustained carpal tunnel syndrome in the performance of duty. The Office began payment of compensation for temporary total disability on September 7, 1995.

On June 10, 1996 an Office medical adviser reviewed the medical evidence and expressed uncertainty that appellant had carpal tunnel syndrome for these reasons: her initial and most persistent complaint had been of pain, where numbness was a far more general complaint in carpal tunnel syndrome; the distribution of her pain and numbness did not correspond to median nerve distribution; her NCV studies were normal, which did not rule out carpal tunnel syndrome, but was "strong evidence against it in a case that is otherwise atypical; and rest away from work had not resulted in relief of symptoms." The Office medical adviser concluded, "The claimant may have some other work-related wrist condition, but I doubt if she has CTS."

Appellant returned to work on October 25, 1996, performing a light-duty position as a store clerk for 20 hours per week. She again stopped work on November 17, 1996 and filed a claim for compensation beginning that date.

By decision dated February 14, 1997, the Office rescinded its acceptance of appellant's carpal tunnel syndrome, finding that the claim was accepted in error and that the evidence did not establish employment-related carpal tunnel syndrome. By decision dated March 21, 1997, the employing establishment removed appellant from her position as sales store checker effective April 11, 1997 due to her inability to perform the duties of her job.

Appellant requested a hearing regarding the Office's rescission of its acceptance of employment-related carpal tunnel syndrome. By decision dated October 30, 1997, an Office hearing representative found that there was a conflict of medical opinion on the question of whether appellant had carpal tunnel syndrome. To resolve this conflict of medical opinion, the Office referred appellant, the case record and a statement of accepted facts to Dr. Jacquelyne Weiss, a Board-certified neurologist, for a reasoned medical opinion regarding whether appellant had any hand or wrist condition causally related to her employment. In a report dated March 16, 1998, Dr. Weiss set forth appellant's history and findings on examination, reviewed the prior medical evidence and diagnosed "Bilateral upper extremity pain and paresthesias of undetermined etiology; possible tendinitis." She then stated:

"My examination today does not reveal consistent findings or electrodiagnostic abnormalities that would enable me to make a diagnosis of carpal tunnel syndrome. A number of non-physiologic and inappropriate responses were noted on specific testing for peripheral nerve entrapment.

"She does have tenderness over the flexor carpi radialis and it is possible that she has some degree of tendinitis. The cause of this is not clear as, if it were related to her occupational activities, it should have long ago abated given that she has not worked for a year and a half."

* * *

"The above described occupational activities may have provoked a tendinitis. However, the lack of remission of symptoms with cessation of the offending activities would make it, on a more probable than not basis, difficult for me to attribute tendinitis to occupational activities in 1995. In addition, the examination is somewhat non-physiologic which very strongly raises the question of psychosocial factors impacting her current condition.

"I do not believe there is any further treatment that is likely to be curative for her. She is not a surgical candidate in my opinion, at least with regards to carpal tunnel release. I feel that she is capable of working. Based upon objective findings, I would not place any restriction on her. It would probably be best if a return to work were somewhat graduated, *i.e.*, four hours per day and then building up to full time over the next month. This would be assuming she would return to cashiering. Other work that did not require as much use of the upper

extremities would not require this graduated return to work. Based on objective findings, I would not specifically limit her repetitive movements of the wrist and hand but, based upon subjective complaints, it would probably be prudent to place her in a position where she did not do constant repetitive use of her hands.”

By decision dated March 23, 1998, the Office found that appellant’s claim was accepted in error and that its acceptance of her claim for carpal tunnel syndrome was rescinded. Appellant requested reconsideration, contending that Dr. Weiss was not impartial, as one of appellant’s attending physicians had offered her employment in his practice. She was contacted and denied knowing or speaking on the telephone to this physician. By decision dated July 10, 1998, the Office refused to modify its prior decision.

Once the Office accepts a claim, it has the burden of justifying the termination or modification of compensation benefits. This holds true where, as here, the Office later decides that it erroneously accepted a claim.¹ To satisfy its burden, the Office cannot merely second-guess the initial set of adjudicating officials but must establish through new evidence, legal arguments or rationale, that its acceptance was erroneous.²

The Board finds that the Office met its burden of proof to rescind its acceptance of employment-related carpal tunnel syndrome.

As found by an Office hearing representative, there was a conflict of medical opinion between appellant’s attending physicians and an Office medical adviser on the question of whether appellant had carpal tunnel syndrome. This conflict arose after the Office’s acceptance of employment-related carpal tunnel syndrome. To resolve the conflict of medical opinion, the Office referred appellant to Dr. Weiss, a Board-certified neurologist. In a report dated March 16, 1998, Dr. Weiss concluded that the absence of consistent findings and electrodiagnostic abnormalities did not enable her to make a diagnosis of carpal tunnel syndrome. This new evidence resolved the conflict of medical opinion and is sufficient to justify rescission of acceptance of employment-related carpal tunnel syndrome.³

¹ *Alfonso Martinisi*, 33 ECAB 841 (1982); *Jack W. West*, 30 ECAB 909 (1979).

² *Alfonso Walker*, 42 ECAB 129 (1990).

³ In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight. *James P. Roberts*, 31 ECAB 1010 (1980).

The decisions of the Office of Workers' Compensation Programs dated July 10 and March 23, 1998 are affirmed.

Dated, Washington, D.C.
June 16, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member